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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190725-0004]

RIN 0648-BI11

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 13

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Gulf of Mexico (Gulf Council) and South Atlantic Fishery Management Councils (South Atlantic Council) (Councils) have submitted Amendment 13 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP), for review, approval, and implementation by NMFS. The purpose of Amendment 13 and this final rule is to align Federal regulations for spiny lobster that apply to the EEZ off Florida with Florida state regulations, re-establish a procedure for an enhanced cooperative management system, and update the regulations

to aid law enforcement and the public.

DATES: This final rule is effective August 30, 2019, except for the amendments to §§ 622.403(b) and 622.413(b)(3), which are effective July 26, 2019. The incorporation by reference of certain materials listed in this rule is approved by the Director of the Federal Register as of August 30, 2019. The incorporation by reference of the material in § 622.413(b)(3), is approved by the Director of the Federal Register as of July 26, 2019.

ADDRESSES: Electronic copies of Amendment 13 may be obtained from the Southeast Regional Office Web Site at <https://www.fisheries.noaa.gov/action/amendment-13-modifications-spiny-lobster-gear-requirements-and-cooperative-management>. Amendment 13 includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Councils manage the spiny lobster fishery under the FMP. The Councils prepared

the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*).

On April 2, 2019, NMFS published a notice of availability (NOA) for Amendment 13 and requested public comment (83 FR 12573). On April 18, 2019, NMFS published a proposed rule for Amendment 13 and requested public comment (84 FR 16233). Amendment 13 and the proposed rule outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 13 and implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

This final rule implements measures to modify the Federal regulations regarding spiny lobster to be compatible with Florida regulations concerning bully net gear requirements and commercial daily possession limits. This rule also clarifies outdated language in the spiny lobster Federal regulations and updates the incorporations by reference to the Florida regulations. In addition, Amendment 13 re-establishes a procedure for an enhanced cooperative management system to provide Florida a

mechanism to propose spiny lobster regulations directly to NMFS for implementation.

Florida Bully Net Permit and Gear Marking Requirements and Prohibitions

This final rule aligns Federal and Florida bully net regulations to improve enforcement and reduce potential confusion among fishers. The rule requires commercial bully net vessels in the EEZ off Florida to have a bully net permit from Florida; requires such a vessel to be marked with the harvester's Florida bully net permit number using reflective paint or other reflective material; prohibits commercial bully net vessels from having trap pullers onboard; and prohibits the simultaneous possession of a bully net and any underwater breathing apparatus (not including dive masks or snorkels) onboard a vessel used to harvest or transport spiny lobster for commercial purposes.

Commercial Spiny Lobster Bully Net and Diving Trip Limits

This final rule incorporates by reference the most recent Florida definition of commercial harvester, which is a person who holds a valid saltwater products license with a restricted species endorsement issued by the Florida Fish and Wildlife Conservation Commission (FWC) and (1) a valid

crawfish license or trap number and lobster trap certificates, if traps are used to harvest spiny lobster; (2) a valid commercial dive permit if harvest is by diving; or (3) a valid bully net permit if harvest is by bully net. Under Florida's regulations, commercial harvesters are restricted to the commercial harvest limits when bully net gear or dive gear is used. Therefore, bully net and dive fishers would be restricted to the state bag limit regardless where the spiny lobster are harvested. However, to make the requirements in the EEZ off Florida more clear, this proposed rule would modify Federal regulations to specifically state the commercial vessel limit for spiny lobster harvested by bully net off all Florida counties, and harvested by diving off Broward, Dade, Monroe, Collier, and Lee Counties, Florida, is 250 spiny lobster per vessel per day.

Clarifications and Updates to Regulatory Language

This final rule also revises and clarifies language in the spiny lobster Federal regulations, including updating phone numbers and websites referenced in 50 CFR 622.413, and correcting a typographic mistake in 50 CFR 622.415. This rule also removes the phrase "during times other than

the authorized fishing season" from 50 CFR 622.402(c)(1), to clarify that unmarked traps are illegal gear, regardless of the time of year, and may be removed in accordance with Florida regulations.

Incorporation by Reference

The final rule updates the incorporation by reference in 50 CFR 622.400(a)(1)(i) which provides the definition of commercial harvester.

The rule also updates the incorporation by reference of the Florida Administrative Code in 50 CFR 622.402(a)(1) and (2) to reflect the effective dates of the current Florida regulations, which mandate that vessel owners and/or operators who harvest spiny lobster by traps in the EEZ off Florida comply with Florida vessel and gear identification requirements. The final rule designates a new incorporation by reference which specifies vessel identification requirements for commercial spiny lobster harvesters who use bully nets to the paragraph added at 50 CFR 622.402(a)(3). It similarly updates the incorporation by reference of the Florida Administrative Code in 50 CFR 622.403(b)(3)(i) and 622.405(b)(2)(i) to reflect the effective dates of the current Florida regulations and

address derelict spiny lobster traps as well as the requirements for lawful spiny lobster trap pulling, respectively. The final rule adds new incorporation by reference of the Florida Administrative Code, in 50 CFR 622.404(e) and (f), which address the alignment of management measures with Florida's regulations, including prohibiting the simultaneous possession of a bully net and any underwater breathing apparatus, and prohibiting the possession of trap pullers, respectively, as discussed above.

The Florida regulations are available at <http://www.flrules.org> and the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399 (telephone: 850-487-0554).

Measures in Amendment 13 Not Codified through this Final Rule

In addition to the measures in this final rule, Amendment 13 re-establishes a procedure that allows Florida to propose rules directly to NMFS, which will increase NMFS' ability to implement consistent Federal regulations in a timely manner.

Comments and Responses

During the public comment period, NMFS received one comment from the Florida Fish and Wildlife Conservation Commission (FWC) and two comments from individuals on Amendment 13 and the proposed rule. These comments, as well as NMFS' respective response, are detailed below. No changes are being made in response to the comments.

Comment 1: The Florida Fish and Wildlife Conservation Commission (FWC) suggests additional changes to paragraph (c)(1) in section 622.402 to allow for the removal of all derelict traps in the EEZ of Florida, instead of only unmarked traps.

Response: NMFS has determined that it is not appropriate to make the suggested changes in this final rule because they would expand the scope of paragraph (c) beyond what was contemplated in the proposed rule. Section 622.402(c) addresses "unmarked traps and buoys," stating that these traps and buoys are illegal gear. Paragraph (c)(1) currently states that this gear, during times other than the authorized fishing season, will be considered derelict and may be disposed of consistent with 65B-55.002 and 65B-55.004 of the Florida Administrative Code. This final rule removes the phrase "during times other than the

authorized fishing season," to clarify that unmarked gear are illegal gear, regardless of the time and year, and may be removed in accordance with Florida regulations. Because the definition of "derelict trap" in the Florida regulations includes more than just an unmarked trap, authorizing the removal of all derelict traps would expand the gear currently identified as illegal under section 622.402, as amended by this final rule. Therefore, NMFS is not changing the proposed rule in response to this comment. However, we note that Amendment 13 reestablishes a procedure to allow Florida to propose rules directly to NMFS. If appropriate, FWC could consider using this new procedure to propose changes to section 622.402(c) to make the illegal gear identified in this provision consistent with the Florida regulations.

Comment 2: The regulations for spiny lobster that apply in the EEZ off Florida should also apply in the EEZ off the coasts of North Carolina, South Carolina, and Georgia.

Response: NMFS disagrees. As noted above, the majority of spiny lobster in the Gulf and South Atlantic occurs off the coast of Florida. The purpose of Amendment 13 is to

align Florida and Federal regulations to both enhance enforcement in this area and reduce potential confusion by fishers. The Councils did not consider expanding the regulations for spiny lobster that apply off the coast of Florida throughout the entire South Atlantic EEZ.

Comment 3: The procedure to allow Florida to propose regulations directly to NMFS could allow Florida to implement measures that are not sufficiently protective of the spiny lobster stock.

Response: NMFS disagrees. The procedure that allows Florida to submit proposed regulations for spiny lobster management directly to NMFS requires that the proposed regulations be consistent with the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law. In addition, the Councils must approve the proposed regulations and NMFS must implement these regulations consistent with Administrative Procedure Act. This includes publishing a proposed rule and soliciting public comment. After reviewing the public comments, NMFS may, in consultation with the Councils, make appropriate revisions to the proposed regulations prior to publishing a final rule.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 13, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record keeping, or other compliance requirements are introduced by this final rule. Accordingly, the Paperwork Reduction Act does not apply to this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. None of the public comments that were received specifically addressed the

certification and NMFS has not received any new information that would affect its determination that this rule would not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the 30-day delay in the date of effectiveness for the incorporation by reference of Florida Administrative Code (F.A.C.) provisions (F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.005: Seasons) as referenced in 50 CFR 622.413(b)(3), because such a delay would be contrary to the public interest. The F.A.C. provisions referenced in 50 CFR 622.413(b)(3) include a provision to allow spiny lobster harvesters to bait and place their traps in the water beginning on the Saturday immediately following the recreational sport season; this year, the Saturday immediately following the recreational sport season is July 27, 2019. Once this section is effective, it will allow the commercial harvesters to place their traps to soak in the water on July 27, instead of requiring them to wait until

August 1. Because the state of Florida will allow the spiny lobster harvesters to place their traps in state waters on July 27, 2019, having a different date to place their traps in Federal waters off Florida may create significant confusion and unnecessarily complicate law enforcement efforts, which is contrary to the public interest. If this part of the final rule were delayed by 30 days, the spiny lobster trap harvesters in Federal waters off Florida would miss the earliest possible date they could set their traps, which may result in a reduced harvest opportunity and lower economic benefits.

In addition, because this measure allows traps to be placed in the water on July 27 instead of August 1, it relieves a restriction, and therefore it also falls within the 5 U.S.C. 553(d)(1) exception to the 30-day delay in the date of effectiveness requirement. The commercial spiny lobster season begins on August 6, 2019, and NMFS wants to allow all spiny lobster harvesters the earliest opportunity to place their traps in Federal waters off Florida beginning in 2019, as intended by the Councils in Amendment 13. Waiving the 30-day delay in the date of effectiveness for § 622.413(b)(3) will allow this final rule to more

fully benefit the fishery through increased fishing opportunities as described in Amendment 13 and as intended by the Councils.

Only the provisions of § 622.413(b) (3) are effective on the date of filing for inspection with the Office of the Federal Register. All other management measures contained in this final rule are effective 30 days after publication in the **Federal Register**.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 622

Bully nets, Fisheries, Fishing, Florida, Gear, Gulf, Incorporation by reference, South Atlantic, Spiny lobster.

Dated: July 25, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory
Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part

622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH
ATLANTIC**

1. The authority citation for part 622 continues
to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.400, revise paragraph (a)(1)(i) to read as
follows:

§ 622.400 Permits and fees.

(a) * * *

(1) * * *

(i) *EEZ off Florida and spiny lobster landed in
Florida.* For a person to sell, trade, or barter, or attempt
to sell, trade, or barter, a spiny lobster harvested or
possessed in the EEZ off Florida, or harvested in the EEZ
other than off Florida and landed from a fishing vessel in
Florida, or for a person to be exempt from the daily bag
and possession limit specified in § 622.408(b)(1) for such
spiny lobster, such person must have the licenses and
certificates specified to be a "commercial harvester," as
defined in Rule 68B-24.002(4), Florida Administrative Code,

in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

* * * * *

3. In § 622.402, revise paragraphs (a) and (c)(1) to read as follows:

§ 622.402 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobster by traps in the EEZ off Florida must comply with the vessel and gear identification requirements specified in Rule 68B-24.006(3), (4), and (5), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

(2) An owner or operator of a vessel that is used to harvest spiny lobster by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 68B-24.006(6), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

(3) An owner or operator of a vessel that is used to harvest spiny lobster by bully net in the EEZ off Florida

must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by bully net in Florida's waters in Rule 68B-24.006(7), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

* * * * *

(c) * * *

(1) *EEZ off Florida*. Such trap or buoy, and any connecting lines will be considered derelict and may be disposed of in accordance with Rules 68B-55.002 and 68B-55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413). An owner of such trap or buoy remains subject to appropriate civil penalties.

* * * * *

4. In § 622.403, revise paragraph (b)(3)(i) to read as follows:

§ 622.403 Seasons .

* * * * *

(b) * * *

(3) * * *

(i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 68B-24.005(3), (4), and (5), Florida Administrative Code, in effect as of November 1, 2018 (incorporated by reference, see § 622.413), apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. A spiny lobster trap, buoy, or rope in the EEZ off Florida, during periods not authorized will be considered derelict and may be disposed of in accordance with Rules 68B-55.002 and 68B-55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413). An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

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5. In § 622.404, add paragraphs (e) and (f) to read as follows:

§ 622.404 Prohibited gear and methods.

* * * * *

(e) In the EEZ off Florida, simultaneous possession of a bully net and any underwater breathing apparatus, not including dive masks or snorkels, onboard a vessel used to

harvest or transport spiny lobster for commercial purposes is prohibited in accordance with Rule 68B-24.007(5), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413). For the purpose of this paragraph, an "underwater breathing apparatus" is any apparatus, whether self-contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water is able to obtain or reuse air or any other gas or gasses for breathing without returning to the surface of the water.

(f) In the EEZ off Florida, vessels that are or are required to be marked with or have identification associated with a bully net permit for the harvest of spiny lobster are prohibited from having trap pullers aboard, in accordance with Rule 68B-24.006(8), the Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

6. In § 622.405, revise paragraph (b)(2)(i) to read as follows:

§ 622.405 Trap construction specifications and tending restrictions.

* * * * *

(b) * * *

(2) * * *

(i) For traps in the EEZ off Florida, by the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, in accordance with the procedures in Rule 68B-24.006(9), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

* * * * *

7. In § 622.408, revise paragraph (b) to read as follows:

§ 622.408 Bag/possession limits.

* * * * *

(b) *EEZ off Florida and off the Gulf states, other than Florida—(1) Commercial and recreational fishing season.* Except as specified in paragraphs (b) (3) and (4) of this section, during the commercial and recreational fishing season specified in § 622.403(b) (1), the daily bag or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During

the special recreational fishing seasons specified in § 622.403(b) (2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.*

During the commercial and recreational fishing season specified in § 622.403(b) (1), a person is exempt from the bag and possession limit specified in paragraph (b) (1) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 622.400(a) (1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 622.403(b) (1),

aboard a vessel with the required licenses, certificates, or permits specified in § 622.400(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term "net or trawl" does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Harvest by diving.* (i) The commercial daily harvest and possession limit of spiny lobster harvested by diving in or from the EEZ off Broward, Miami-Dade, Monroe, Collier, and Lee Counties, Florida, is 250 spiny lobster per vessel.

(ii) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who

harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 622.400(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(6) *Harvest by bully nets in the EEZ off Florida.* The commercial daily harvest and possession limit of spiny lobster harvested by bully net in the EEZ off Florida is 250 spiny lobsters per vessel.

* * * * *

8. In § 622.412, revise the introductory text to read as follows:

§ 622.412 Adjustment of management measures.

In accordance with the framework procedures of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RA may establish or modify the following items:

* * * * *

9. In § 622.413:

a. Revise paragraphs (b) introductory text and (b) (2) through (4);

b. Redesignate paragraphs (b) (5) through (7) as (b) (6) through (8);

d. Add new paragraph (b) (5); and

e. Revise paragraph (c) introductory text.

The revisions and addition read as follows:

§ 622.413 Incorporation by reference (IBR) .

* * * * *

(b) Florida Administrative Code (F.A.C.): Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850-487-0554; <http://www.flrules.org>.

* * * * *

(2) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.002: Definitions, amended May 1, 2017, IBR approved for § 622.400 (a) .

(3) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.005: Seasons, amended November 1, 2018, IBR approved for § 622.403(b) .

(4) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.006: Gear: Traps, Buoys, Identification Requirements, Prohibited Devices, amended May 1, 2017, IBR approved for § 622.402(a), § 622.404(f), and § 622.405(b).

(5) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.007: Other Prohibitions, amended May 1, 2017, IBR approved for § 622.404(e).

* * * * *

(c) Florida Statute: Florida Fish and Wildlife Commission, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850-487-0554;
<http://www.leg.state.fl.us/statutes/>.

* * * * *

10. Revise § 622.415 to read as follows:

§ 622.415 Limited exemption regarding harvest in waters of a foreign nation.

(a) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobster, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this subpart, except for § 622.409 with

which such an owner or operator must comply, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

(b) [Reserved]

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